IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 573 of 2007()

CP.152/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR
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PETITIONER: ACCUSED

SAJEEVAN @ SAJI, AGED 35 YEARS,
S/O. KRISHNAN, PAYYANNUR THERUV,
WEAVERS STREET, PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT

STATE - REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.573 of 2007

Dated this the 2nd day of March, 2007

ORDER

The petitioner is the 7th accused in a prosecution, inter alia, under Section 307 read with 149 I.P.C. All the co-accused have already been tried, found not guilty and acquitted. The petitioner was not available for trial. The case against him has been split up and the same is pending as C.P.152 of 2003.

2. The petitioner has come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner.

3. What is the reason ? According to the learned counsel for the petitioner, the petitioner could not be present before court on account of reasons beyond his control. According to him, the petitioner is absolutely innocent. He was not available at the place of occurrence at all at the relevant time and was employed in Bombay. He submits that of the 3 eye witnesses, 2 of them are not living now. The third one-CW3, was examined in the trial against the co-accused and he had turned hostile and had not supported the prosecution case at all. In these circumstances, the counsel prays that powers under Section 482 Cr.P.C may be invoked.

4. The decision in **Moosa v. Sub Inspector of Police** [2006 (1) KLT 552(F.B)] is authority for proposition that the acquittal of the accused is by itself no reason for the absconding co-accused to claim any advantage. The counsel submits that this case would fall within the exception which can be carved out of **Moosa** as the substratum of the prosecution case is lost by the acquittal of the co-accused. I am unable to accept this contention. Merely because the hostile witness did not identify the other accused who stood trial in the earlier proceedings, it cannot be assumed lightly that such witness will not be able to identify the petitioner. That would be an improper and perverse assumption not supported by any circumstances.

5. I am, in these circumstances, satisfied, that the petitioner, who has been absconding all the while and who now has surfaced after the acquittal of the co-accused and wants to quash the proceedings under Section 482 Cr.P.C, cannot succeed in that venture. The petitioner must follow the ordinary and regular procedure of appearing before the court for trial and claim discharge/acquittal as the case may be.

6. The learned counsel for the petitioner submits that the petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law

and expeditiously. I find no merit in that contention. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

7. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless exceptional and compelling reasons are there.

(R.BASANT, JUDGE)

rtr/-